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PART III

Notifications by High Court, Advertisement, Notices and Change of Name etc.

HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

The 7th May, 2021

The Haryana Real Estate Regulatory Authority, Gurugram (Sale of Apartments/Floors in a Real Estate Project on the basis of Carpet Area) Regulations, 2021

No. 22/RERA GGM Regulations 2021.— In exercise of the powers conferred on the Haryana Real Estate Regulatory Authority, Gurugram under section 85(1) of the Real Estate (Regulation and Development) Act, 2016 read with section 34(f) of the Real Estate (Regulation and Development) Act, 2016 and all others powers enabling it in that behalf, the Haryana Real Estate Regulatory Authority, Gurugram having considered it necessary to provide for a mechanism to ensure compliance of the obligation cast upon the promoters and real estate agents to sell/facilitate sale of Apartments/Floors in a real estate project on the basis of carpet area; hereby makes the Haryana Real Estate Regulatory Authority, Gurugram, (Sale of Apartments/Floors in a Real Estate Project on the Basis of Carpet Area) Regulations, 2021 as under:

1 Short Title, Object and Commencement

- i These Regulations may be called the Haryana Real Estate Regulatory Authority, Gurugram (Sale of Apartments/Floors in a Real Estate Project on the basis of Carpet Area) Regulations, 2021.
- ii. The Real Estate (Regulation and Development) Act, 2016 read with the Haryana Real Estate (Regulation and Development) Rules, 2017 have come into force and are being implemented by the Haryana Real Estate Regulatory Authority, Gurugram *for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal of the grievance received by it from time to time.* The Real Estate (Regulation and Development) Act, 2016 intends sale of Apartments/Floors in a real estate project on carpet area basis as has been defined in section 2(k) of the Act *ibid.*

The definition of super area as provided in various builder-buyer agreements is vague and there are wide wide variations in the definition. The property is not properly described by way of mentioning super area without specifically giving details and breakup of the components included in the super area. The practice of sale of real estate on super area basis is illegal, misleading, ambiguous, opaque, and gives rise to confusion and complexities and at times result into avoidable litigation.

So, keeping in view the purpose and intention of the Real Estate (Regulation and Development) Act, 2016 and the Rules made thereunder, a need was felt to frame regulations on the abovementioned subject and accordingly the same have been framed.

- iii. The Haryana Real Estate Regulatory Authority Gurugram (Sale of Apartments/Floors in a Real Estate Project on the Basis of Carpet Area) Regulations, 2021 shall apply to sale of all real estate projects falling within the jurisdiction of the Real Estate Regulatory Authority, Gurugram, as notified by the Government of Haryana vide notification No. 1/92/2017-1TCP dated 14/12/2017, which comprises entire area of Gurugram district.
- iv. These regulations shall come into force with effect from the date of notification in the official gazette.

2. Definitions

- (i) “Act” means the Real Estate (Regulation and Development) Act, 2016.
- (ii) “Authority” means the Haryana Real Estate Regulatory Authority, Gurugram established under sub-section (1) of section 20 of the Act.
- (iii) “Carpet Area” shall have the same meaning as assigned to it under section 2(k) of the Act.
- (iv) “Real Estate Project” shall have the same meaning as assigned to it under section 2(zn) of the Act.
- (v) “Unfair Practice/fraudulent practice/irregularity” for the purpose of these regulations shall have the same meaning as assigned to it in explanation to section 7(1)(c) and section 10(c) which inter-alia includes an agreement for sale on any other basis (super area/covered area/sale area or any other nomenclature prevalent in the area) except on the basis of carpet area.

3. Carpet Area:

- i Before Real Estate (Regulation and Development) Act, 2016 there was lack of a legal description for the term “carpet area”. The Real Estate (Regulation and Development) Act, 2016 has provided clear definition of carpet area which now has addressed the vagueness and uncertainty in this regard. The term carpet area has been specifically and clearly defined under section 2(k) of the Act *ibid*.
- ii As per section 2(k) of the Real Estate (Regulation and Development) Act, 2016;
"carpet area" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.
Explanation. — *For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;*
- iii The definition of carpet area as provided under section 2(k) of the Act means the net usable floor area. Following have been excluded from the definition of carpet area:
 - a. Externals wall;
 - b. Service shafts;
 - c. Balcony;
 - d. Verandah;
 - e. Open terrace.However, the internal partition walls of the apartment are not excluded.
The definition of carpet area has now been made transparent and leaves no scope for any ambiguity categorically specifying the property on carpet area basis.
- iv All walls which are constructed or provided on the external face of an apartment shall be regarded as “external wall”.
- v All walls or independent columns constructed or provided within an apartment shall be regarded as “internal partition wall”.

4. Carpet area information to be provided by the promoter:

- i A promoter is obligated to provide complete information under clause (h) of section 4(2) of the Real Estate (Regulation and Development) Act 2016 about the number, type and carpet area of the real estate unit for sale in the project along with the area of exclusive balcony or verandah and open terrace area.
- ii It is mandatory for the developers of all ongoing projects, to disclose the size of their apartments, based on carpet area (i.e., the area within four walls). This includes usable spaces, like kitchen and toilets. This has brought transparency in the salable area and imparts clarity to the buyer.

5. Compliances:

- i One of the condition for grant of registration is that in future any new allotment in ongoing projects or new projects, the apartment shall be sold only on carpet area basis and not on super area basis and the rate shall be inclusive of all charges. Therefore, after coming into force of the Real Estate (Regulation and Development) Act, 2016 no apartment in a real estate project shall be sold on any other basis except on carpet area basis. If any promoter is found violating this condition, it shall be considered as a ground for initiating penal proceedings against the promoter including revocation of registration granted under section 5 of the Act *ibid*.
- ii In case of ongoing projects where the promoter has allotted real estate units on super area basis prior to the Real Estate (Regulation and Development) Act, 2016, he shall disclose what all components exactly constituted super area and also whether the super area as promised in the builder buyer agreement entered into between the allottee and the promoter actually exist or has been actually delivered to the allottee or not. This is to prevent any fraud with the allottee when the unit is sold on super area basis.
- iii No conveyance deed of a real estate unit shall be registered except on the basis of carpet area. In cases where the real estate unit was allotted to the allottee prior to the Real Estate (Regulation and Development) Act, 2016 coming into force, the promoter shall at the time of registration of the conveyance make disclosure of all the components constituting the super area, however the conveyance deed shall be registered only on carpet area basis.
- iv In case of a project which is exempted from registration under section 3(2) of the Act the promoter shall disclose to the allottee the size of the apartment based on carpet area even if sold on any other basis such as super area/super built up area, built up area etc., which shall not affect the validity of the agreements entered into between the promoter and the allottee to that extent, but shall only specify the carpet area of such unit sold on super area basis.
- v Any agreement for sale on any other basis except on carpet area shall amount to indulgence in unfair trade practice/fraudulent practice by the promoter and shall attract appropriate action as per the relevant provisions of the Act.
- vi The real estate agents shall not facilitate sale or purchase of apartments/floors in a real estate project on the basis of super area. If any real estate agent is found engaged in such illegal sale/purchase, he shall be deemed to be engaged in unfair trade practice and his/her license may be revoked or/and a penalty may be imposed on him as per provisions of section 65 of the Act *ibid*.
- vii The allottee shall be rightfully in seeking details regarding each component comprising the super area and the same shall be provided to him/her by the promoter or the real estate agent, as the case may be.

6 Applicability

- i The definition of real estate project as provided under section 2(zn) does not distinguish between a registered and non-registered real estate project. Section 2(zn) provides that:
“real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

- ii Therefore, in conformity to the definition of real estate project as provided under the Act these regulations shall be applicable to the following:
- The real estate projects that are launched after coming into force of the Real Estate (Regulation and Development) Act, 2016.
 - The real estate projects launched before coming into force of the Real Estate (Regulation and Development) Act, 2016 and for which completion certificate is not issued i.e. ongoing projects. It is reiterated for the sake of clarification that a license lapses on the completion of the project and not merely on the grant of occupation certificate. The purpose of occupation certificate is limited to the extent that the building for which the occupation certificate has been issued is habitable and possession is offered to the allottees. The project is ongoing until the completion certificate has been issued by the competent authority.
Such ongoing project are obligated under the Real Estate (Regulation and Development) Act, 2016 to register themselves with the Haryana Real Estate Regulatory Authority, Gurugram. The promoter has to reveal the size of the apartment based on carpet area at the time of registration of projects, even if the apartments were earlier sold on any other basis, such as super area, super built-up area, built-up area, etc.
In case of sold out units of the on-going project where sales were made on super area basis before coming into force of the Real Estate (Regulation and Development) Act, 2016 the promoter has to give details of the super area component wise, as per the definition of super area provided in the earlier executed builder buyer agreements, for the allotted unit to the buyer and such description shall form a part of the conveyance deed.
 - The real estate projects which are exempted from registration as per provisions of section 3(2) of the Real Estate (Regulation and Development) Act, 2016 as these projects are exempted from registration only but are within the ambit of the provisions of the Real Estate (Regulation and Development) Act, 2016.
- iii These regulations shall be applicable to resale of a real estate unit i.e apartment/floor in the favor of subsequent allottee, as the Real Estate (Regulation and Development) Act, 2016 does not distinguish between an allottee and a subsequent allottee. This shall bring more transparency into the real estate sale. After coming into force of the Real Estate (Regulation and Development) Act, 2016 the obligations of the promoter does not end with the conveyance deed as there are certain obligations dependent upon lapse of certain time period such as structural defect liability as provided under section 14(3) extends to five years from the date of handing over of possession and land title defect liability extends to a lifetime.
- iv Further, as provided under section 13 of the Real Estate (Regulation and Development) Act, 2016 read with rule 8 of the Haryana Real Estate (Regulation and Development) Rules, 2017 the promoter shall not accept a sum more than ten percent of the cost of the apartment without first entering into written agreement for sale and also registration of the sale agreement. An agreement for sale is an extremely important document and constitutes the terms and conditions of sale of a property between the seller and the buyer.
- v In this regard rule 8 of the Haryana Real Estate (Regulation and Development) Rules, 2017 provides for a model agreement at annexure A of the Rules. The model agreement in clause 1.2 provides that the total price for the built up unit/apartment for residential/ commercial/ industrial/IT/any other usage (as the case may be) along with parking (if applicable) is calculated based on the carpet area.

Block/Building/Tower No.	Rate of Apartment per square feet. (Carpet area basis)
Apartment No.	
Type	Size of the apartment (carpet area)
Floor	
Parking(if applicable)	
Externals wall	To be excluded
Service shafts	To be excluded
Balcony	To be excluded
Verandah	To be excluded
Open terrace	To be excluded
Total Price (in rupees)	-----

- vi In case of the ongoing projects the promoters shall incorporate in the agreements for sale the actual carpet area of the unit.

7 Penalty for non-compliance/violation of these regulations

Any violation of these regulations by the promoter or real estate agent will have serious implications and penal proceedings shall be initiated against them.

- i **Penalty against the promoter for non-compliance for these regulations:** For any act of violation or non-compliance of these regulations by the promoter penal proceedings shall be initiated as per the following provisions of the Real Estate (Regulation and Development) Act, 2017:
- a. The promoter shall be liable for revocation of registration of real estate project under section 7(1)(c). Where ever the promoter is found indulging in unfair trade practice/fraudulent practice of selling the Apartment/Floor in a real estate project on the basis of super area/covered area/ sale area or any other nomenclature except on carpet area, the Authority may, on receipt of a complaint or suo-motu in this behalf or on recommendation of the competent authority, revoke the registration granted under section 5 to the promoter or section 9 to the real estate agent of the Real Estate (Regulation and Development) Act, 2016 as the case may be.
 - b. Penal action including imposition of penalties by the Authority in exercise of its powers under section 34(f) and section 38 or both. If the promoter contravenes the provisions of these regulations, he shall be liable under section 61 to a penalty which may extend upto five percent of the estimated cost of the real estate project as determined by the Authority.
- ii **Penalty against the real estate agent for non-compliance for these regulations:** If any promoter is found indulging in facilitating sale of a real estate unit i.e. apartment/floor on any other basis except on carpet area basis it shall be treated as involvement in unfair trade practice under section 10 of the Real Estate (Regulation and Development) Act, 2016 and proceedings for revocation of registration of such errant real estate agent may be initiated as per provisions of section 9(7) of the Act *ibid*.
- iii It is clarified here that regulations 6(ii) and (iii) shall be applicable to all real estate projects, irrespective of the fact that they are registered/registerable or exempted from registration.
- iv For providing any false information regarding sale on the basis of carpet area, the promoter shall be liable to a penalty which may extend to up to five percent of the estimated cost of the real estate project, as determined by the Authority.
- v Any sale of real estate project on any other basis except on carpet area basis after Real Estate (Regulation and Development) Act, 2016 coming into force may be declared as null and void by the Authority.

Secretary,
For: Haryana Real Estate Regulatory Authority,
Gurugram.